

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

PENTHOUSE OWNERS ASSOCIATION, INC.

PLAINTIFFS

V.

CIVIL ACTION NO. 1:07cv568-LTS-RHW

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON

DEFENDANTS

ORDER

_____ Plaintiff has had difficulty accepting the fact that this Court is not going to allow evidence of replacement cost that is unambiguously defined in the insurance policy issued to it by Defendant, despite the fact that the Court has clearly held to this position in several rulings. *See* docket entries [193] [202] [210]. Nevertheless, that did not prevent Plaintiff from making another attempt to admit (this time through the back door) what the Court has consistently disallowed in the front, for it has filed a [208] Motion for Leave to Use Evidence of Replacement Cost to Prove Extra-Contractual Damages.

_____ The principal ground for Plaintiff's request for relief is particularly questionable in light of the fact that it received flood policy limits of \$3.6 million, while also being in possession of the land, following Hurricane Katrina, which would have allowed it to commence construction sooner rather than later, regardless of Defendant's claim decision. In addition, Plaintiff's conciliatory declaration that it does not intend for the instant motion to seek reexamination of the Court's other rulings rings hollow, and indeed appears to merely undermine the rulings referred to above. In essence, Plaintiff is trying to recover extra-contractual damages associated with replacement cost when it has not met the contractual requirements for recovering that element in underlying policy benefits.

The only result of Plaintiff's current request is to introduce into the trial the dangers of unfair prejudice, delay, confusion of the issues, misleading the jury, and waste of time. Fed. R. Evid. 403. Obviously, this is not permissible.

_____ Accordingly, **IT IS ORDERED:**

Plaintiff's [208] Motion for Leave to Use Evidence of Replacement Cost to Prove Extra-contractual Damages is **DENIED**.

SO ORDERED this the 19th day of August , 2008.

s/ L. T. Senter, Jr.
L. T. SENTER, JR.
SENIOR JUDGE